IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision :7-12-2006

State of Haryana Vs. Ram Phal

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Sunil Katyal, DAG, Haryana.

Virender Singh, J.

Ram Phal was working as Assistant Foreman in the office of Sub Divisional Office, Electricity Board. He was booked in a case FIR No. 39 dated 1.6.2004 under Sections 7,13(1)(d) of the Prevention of Corruption Act, 1988 registered at police station Alewa, District Jind for allegedly demanding and accepting bribe money to the tune of Rs.3500/- from complainant-Satyawan, the FIR lodger. He has earned acquittal vide impugned judgement of learned Special Judge-cum-Additional Sessions Judge, Jind dated 14.1.2006. Aggrieved by the same the State of Haryana has preferred the instant appeal along with an application (bearing Criminal Miscellaneous No. 624-MA/2006) under Section 378(3) of the Code of Criminal Procedure for grant of leave.

Since there is a delay of 9 days in filing the appeal, an application (Criminal Miscellaneous No. 66959 of 2006) under Section 5 of the Limitation Act has also been moved.

In order to prove its case, the prosecution had examined as many as 12 witnesses. The plea of the appellant was that he had never demanded or accepted bribe from the complainant.

The learned trial Court while appreciating the entire evidence has acquitted the respondent on the ground that as per the case of the complainant he had moved an application before the SDO for change of electricity connection site, but no such application was placed on record. The categoric finding is that the SDO had never authorised the respondent to prepare the estimate for change of the connection site. The other ground given by the trial Court is that all the material witnesses of the raid had contradicted each other on material aspects inasmuch as the Executive Magistrate-cum-Tehsildar had gone to the extent of saying that the pocket of the shirt of the respondent was never washed in his presence but his hands were washed. The Forensic Science Laboratory report was also not tendered into evidence by the prosecution. Therefore, the view taken up by trial Court is that even if it is said that all the exhibits contained traces of phenolphthalein powder, it would be of no help to the case of the prosecution, as it has come in evidence that Sh. Sahab Ram Nehara, Deputy Superintendent of Police (PW12) had applied phenolphthalein power to currency notes Exhibits P1 to P7, who had nabbed the respondent/accused and allegedly recovered the currency notes from his pocket. As per the allegations, he had washed the hands of the accused and the pocket of his shirt in Sodium Carbonate solution. Therefore, it could not safely be said that the crystals of the said power came on the hands of the accused after he was apprehended at the spot. The learned trial Court while extending benefit of doubt to the accused on this aspect has relied upon a judgement of Hon'ble Apex Court rendered in **State of Uttar Pradesh Vs. Jagdish Singh Malhotra, 2001(1) Crimes 322(SC)**.

After having scrutinizing the case of the prosecution minutely,

we are of the view that there is no demonstrable perversity in the findings of the trial Court warranting our interference for taking a different view than the one already taken by the Court below. It is well settled that an order of acquittal is to be disturbed only under compelling circumstances that too when it results into miscarriage of justice.

Applying the aforesaid rationale in the case in hand and on the basis of the finding before us, we feel ourselves hesitant in granting leave to appeal. Consequently Criminal Miscellaneous No. 624-MA of 2006 is dismissed.

Since we do not find any merit in the instant appeal, the miscellaneous application (Crl. Misc. No. 66959 of 2006) for condonation of delay in filing the appeal is also dismissed.

[Virender Singh]
Judge

[A.N. Jindal]
Judge

December 7, 2006
`ask'